

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**



CITY OF REDONDO BEACH,

Employer,

and

CALIFORNIA TEAMSTERS, LOCAL 911,

Exclusive Representative.

Case No. LA-IM-152-M

Administrative Appeal

PERB Order No. Ad-413-M

May 16, 2014

Appearances: Carico, Johnson & Toomey by William G. Benz, Attorney, for City of Redondo Beach; Law Offices of Patricia S. Waldeck by Patricia S. Waldeck, Attorney, for California Teamsters, Local 911.

Before Martinez, Chair; Winslow and Banks, Members.

DECISION

WINSLOW, Member: This case comes before the Public Employment Relations Board (Board) on appeal by California Teamsters, Local 911 (Teamsters) of an administrative determination (attached) by the Office of the General Counsel, which denied the Teamsters' request for factfinding pursuant to the Meyers-Miliias-Brown Act (MMBA)¹ on the grounds that it was untimely. The factfinding request was made with respect to negotiations for a successor collective bargaining agreement between the Teamsters and the City of Redondo Beach (City). The appeal challenged the administrative determination on the grounds that the Teamsters was excused in its untimely filing, and that the City suffered no prejudice from the untimely filing.

¹ MMBA is codified at Government Code section 3500 et seq.

We have reviewed the record and the relevant law and find the administrative determination to be well reasoned and supported by the facts.² We hereby dismiss the Teamsters' appeal and adopt the administrative determination as the decision of the Board itself.

ORDER

The California Teamsters, Local 911's appeal of the administrative determination in Case No. LA-IM-152-M is hereby DENIED.

Chair Martinez and Member Banks joined in this Decision.

² See *City of Redondo Beach* (2014) PERB Order Ad-409-M, in which this Board noted: "The responsibility to request factfinding in a timely manner is [the] sole responsibility of the employee organization." (*Id.* at p. 7.)

PUBLIC EMPLOYMENT RELATIONS BOARD



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January 7, 2014

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Re: *City of Redondo Beach and California Teamsters Local 911 (Service, Maintenance and Crafts Unit)*
Case No. LA-IM-152-M
Administrative Determination

Dear Interested Parties:

On December 30, 2013, the California Teamsters Local 911 (Teamsters) filed a request for factfinding with the Public Employment Relations Board (PERB or Board) pursuant to section 3505.4 of the Meyers-Milias-Brown Act (MMBA) and PERB Regulation 32802.¹ The factfinding request is made with respect to negotiations for a successor collective bargaining agreement (CBA) between Teamsters and the City of Redondo Beach (City).

By letter dated January 3, 2014, the City objected to the factfinding request, asserting that the request was untimely filed more than thirty days after the date impasse was reached.

By letter dated January 6, 2014, Teamsters argued that good cause exists to excuse its late filing. Teamsters provides a declaration from its attorney, Patricia Waldeck (Waldeck), attesting to the following: (1) on Friday, December 20, 2013, Waldeck prepared the factfinding request at her home office and attempted to transmit it to her assistant via e-mail message; (2) for unknown reasons, the form factfinding request she prepared would not go through and her assistant could only view a blank form; (3) Waldeck attempted to personally deliver the document to her assistant, but had to appear in court that afternoon and was unable to get the document to her assistant in time for him to file and serve it on December 20, 2013; (4) on Monday, December 23, 2013 (the next business day), Waldeck's assistant attempted to file the request, but mistakenly mailed it to PERB for filing by regular mail, rather than filing it with

¹ The MMBA is codified at Government Code section 3500 et seq. PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the MMBA and PERB Regulations may be found at www.perb.ca.gov.

PERB electronically; and (5) due to a delay in the mail, presumably due to large volumes of mail for the Christmas holiday, PERB did not receive the factfinding request in the mail until December 30, 2013. Teamsters also alleges that on December 19, 2013, Teamsters representative Carlos Rubio sent an e-mail message to City management employees, including Assistant City Manager Peter Grant, regarding the parties' impasse in bargaining and stated, in part, "we are also considering filing for factfinding."

By e-mail message dated January 6, 2014, the City submitted a written response to Teamsters' position statement, reiterating its objection on the basis of timeliness. The City alleges that it did not receive the factfinding request until thirteen days after the filing deadline (approximately January 2, 2014).

Discussion

MMBA section 3505.4, subdivision (a), provides as follows:

The employee organization may request that the parties' differences be submitted to a factfinding panel . . . If the dispute was not submitted to mediation, an employee organization may request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. . . .

PERB Regulation 32802 provides as follows:

(a) An exclusive representative may request that the parties' differences be submitted to a factfinding panel. The request shall be accompanied by a statement that the parties have been unable to effect a settlement. Such a request may be filed:

(1) Not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant either to the parties' agreement to mediate or a mediation process required by a public agency's local rules; or

(2) If the dispute was not submitted to mediation, not later than 30 days following the date that either party provided the other with written notice of a declaration of impasse.

On November 13, 2013, the City gave Teamsters a last, best, and final offer (LBFO) which, if not accepted by November 20, 2013, would constitute a declaration of impasse. The parties did not submit the bargaining dispute to mediation or select a mediator. Teamsters filed the instant request for factfinding on December 30, 2013. This is more than thirty days after the

November 20, 2013, date of impasse. Accordingly, the request is untimely within the meaning of PERB Regulation 32802 and Government Code section 3505.4.

PERB Regulation 32136 provides as follows:

A late filing may be excused in the discretion of the Board for good cause only. A late filing which has been excused becomes a timely filing under these regulations.

The Board has found good cause to exist where the explanation for the delay was “reasonable and credible.” (*Barstow Unified School District* (1996) PERB Order No. Ad-277 [*Barstow*].) The Board has also found good cause to exist for “honest mistakes” such as mailing or clerical errors. (*Ibid.*) Good cause has been found to exist where a short delay resulted from circumstances beyond the control of the filing party or from excusable misinformation. (*United Teachers of Los Angeles (Kestin)* (2003) PERB Order No. Ad-325 (*Kestin*).) Good cause exists only where the filing party has made “a conscientious effort to timely file.” (*Ibid.*)

For example, the Board excused a late filing of an amended unfair practice charge where the Charging Party provided proof of service establishing that the document was deposited in the mail in advance of the filing deadline. (*Fallbrook Public Utility District* (2012) PERB Decision No. 2229-M.) The Board has also found good cause to excuse a late filing where a party timely filed documents, but filed them in the wrong PERB office. (*Santa Monica Community College District* (2012) PERB Order No. Ad-393.) PERB has also found good cause where documents were timely served on the opposing party, but inadvertently not filed with PERB due to a clerical error. (*Kern Community College District* (2008) PERB Order No. Ad-372.) By contrast, the Board has not found good cause to excuse a filing that was eight days late, where no reasonable explanation was given. (*Stanislaus Consolidated Fire Protection District* (2012) PERB Order No. Ad-392-M.) Where sufficient reasons are not provided, the Board cannot find good cause to exist based upon lack of prejudice alone. (*Stanislaus Consolidated Fire Protection District, supra*, PERB Order No. Ad-392-M.) The finding of good cause is discretionary. (*Ibid.*) In those circumstances where the reason for the untimely filing is “reasonable and credible,” the Board then evaluates whether permitting a late filing would be prejudicial to the opposing party. (*Barstow, supra*, PERB Order No. Ad-277.)

Here, good cause to excuse the late filing of the factfinding request has not been established. PERB regulations permit same-day filing by facsimile transmission (PERB Regulation 32090) and by electronic filing (PERB Regulation 32091). Teamsters provides evidence explaining that the factfinding request form could not be prepared by Waldeck and her assistant by the close of business on December 20, 2013, due to computer problems.² However, there is no explanation regarding why, once the document was completed, an effort was not made to ensure that it was filed with PERB immediately. The document could have been filed via

² It is noted that parties are not required to use the form PERB has provided for making MMBA factfinding requests.

facsimile or via electronic filing after the close of business on December 20, 2013, over the weekend, or as soon as PERB's office was opened on Monday, December 23, 2013. However no facts have been provided to show such an attempt was made, nor does PERB have any record of having received an electronic or facsimile filing. It is not explained why the document was filed by mail, and not placed in the mail for service and filing until several days after the filing deadline had passed, on December 23, 2013. Accordingly, good cause does not exist to excuse the late filing.

Determination

The request for factfinding is untimely filed. Accordingly, the factfinding provisions of MMBA section 3505.4 do not apply to this situation and this request is denied.

Right to Appeal

Pursuant to PERB Regulations, an aggrieved party may file an appeal directly with the Board itself and can request an expedited review of this administrative determination. (Cal. Code Regs., tit. 8, §§ 32147, subd. (a), 32350, 32360, 32802, 61060.) An appeal must be filed with the Board itself within 10 days following the date of service of this determination. (Cal. Code Regs., tit. 8, § 32360, subd. (b).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board. (*Ibid.*)

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

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 Sacramento, CA 95811-4124
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If an aggrieved party appeals this determination, the other party may file with the Board an original and five copies of a statement in opposition within 10 calendar days following the date of service of the appeal. (Cal. Code Regs., tit. 8, § 32375.)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, § 32140 for the required contents.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, § 32135, subd. (c).)

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Cal. Code Regs., tit. 8, § 32132.)

Sincerely,

~~Laura~~ Z. Davis
Senior Regional Attorney

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